

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**IN THE INTEREST OF: K.G., L.S., AND K.L.,  
PLAINTIFFS**

**JUVENILE OFFICER,  
RESPONDENT**

**vs.**

**K.G. (FATHER),  
APPELLANT**

**M.G. (MOTHER),  
DEFENDANT**

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DOCKET NUMBER WD78050

DATE: OCTOBER 6, 2015

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Appeal from:

The Circuit Court of Jackson County, Missouri  
The Honorable Marco A. Roldan, Judge

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Appellate Judges:

Before Division One: Cynthia L. Martin, P.J., Joseph M. Ellis, J. and James E. Welsh, J.

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Attorneys:

Edward E. Moore, for Respondent

Michael J. Cappo, for Appellant

Ruth A. French-Hodson, Co-counsel for Appellant

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**IN THE INTEREST OF: K.G., L.S., AND K.L., PLAINTIFFS  
JUVENILE OFFICER, RESPONDENT**

**v.**

**K.G. (FATHER), APPELLANT  
M.G. (MOTHER), DEFENDANT**

WD78050

Jackson County, Missouri

Before Division One Judges: Cynthia L. Martin, P.J., Joseph M. Ellis, J. and James E. Welsh, J.

K.A.G. ("Father") appeals from a judgment entered by the Circuit Court of Jackson County, Family Court Division, in which the court assumed jurisdiction over his minor child, K.G., and his minor step-children, K.L. and L.S., pursuant to § 211.031.1(1).

**REVERSED AND REMANDED.**

**Division One holds:**

- (1) Section 211.211.4 directs the family court to appoint counsel for a custodian if he or she (1) is indigent, (2) desires the appointment of counsel, and (3) a full and fair hearing requires appointment of counsel for the custodian. It is the court's obligation to inform a custodian of their right to representation, not the custodian's obligation to initiate an inquiry into the right to counsel.
- (2) The fact that Rule 115.03(a) uses the term "requests" in place of "desires" does not relieve the family court of its obligation to inform a custodian of the right to counsel. The use of the term "requests" in the rule was simply meant to clarify that the custodian, upon being informed of the right to appointment of counsel, has an affirmative duty at that point to notify the court, either verbally or in writing, that the custodian wants counsel appointed.
- (3) In order to determine if a custodian is entitled to counsel, as Rule 124.06(b) requires the court to do at the start of any adjudication hearing, the court must inquire of the custodian regarding indigence and the desire for counsel and must evaluate the necessity of counsel for a full and fair hearing. Because no such inquiries were made in this case prior to the adjudication, the family court failed to comply with § 211.211.4 and Rule 124.06(b).
- (4) While the Juvenile Officer contends that Father was adequately informed of the right to counsel by written notice sent along with the summons, the returns of service for the summonses with which Father was served do not contain that information, and Father does not concede that the summonses with which he was served contained a sheet informing him of the right to counsel. Accordingly, the record simply does not support the Juvenile Officer's contention that Father received notice of his right to counsel or the need to request the appointment of counsel. On that basis alone, the Juvenile Officer's argument would need to be rejected.
- (5) Even had Father received notice of the right to counsel with the summonses, Father's mere appearance at court without counsel after having received such

notice, especially where the notice makes no mention of a deadline for requesting counsel or the potential for waiver of that right, would not constitute an affirmative waiver of the family court's obligation under Rule 124.06(b)(3) and § 211.211.4 to inquire and determine whether Father desired and was entitled to the appointment of counsel.

- (6) Due to the lack of compliance with § 211.211.4 and Rule 124.06(b) and the lack of evidence that Father waived his statutory right to counsel, the family court committed reversible error when it failed to inquire of Father regarding his right to appointed counsel when Father arrived without counsel at the adjudication hearing.

Opinion by Joseph M. Ellis, Judge

Date: October 6, 2015

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